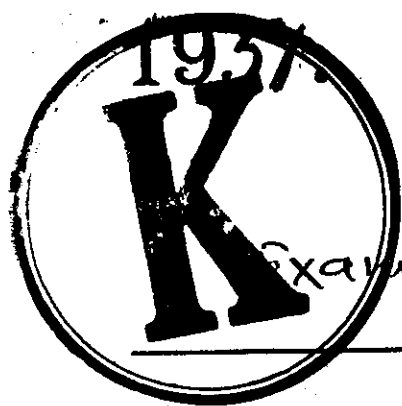




File No. S. Dh'war 5/51

Legal

DEPARTMENT
E. BRANCH

Subject:— Suits. Dharwar.

In the Court of the Civil Judge (S.D.), Dharwar.
Civil Suit No. 2 of 1950.

Shri Basanganda

Plff.

vs.
The Lamkhandi State Bank

Defl.

Re: For possession of lands and for declaration
that the suit lands were not liable for the
mortgage debt.

S. Dh'war 5/51.

File No.

C O N T E N T S.

Legal Department File No. S. No. 5/57.

Sr.No.	R.I./O.No.	Subject	Pages.
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Suits Dharwar.

In the Court of the Civil Judge (S.D.)
Dharwar.

C.S.No. 2 of 1950.

Shri Basangwale

v/s

The Jamkhandi State Bank

For possession of lands and
for declaration that the
suit lands were not liable
for the mortgage debt.

1 3

Subject:- Sanction to defend the suit in Civil suit
No. 2/50 of the Civil Judge Sn.Dn.Dharwar.

No.L.A.W.W.S.4709.
Office of the Collector,
Dharwar, 17th Nov. 1950.

Letter.

To

The Remembrancer of Legal Affairs,
Bombay.

I enclose papers received from the District
Government Pleader, Dharwar under his No. 1158 dated
8/11/1950 and request you to move Government in the
legal Department to accord sanction to the defence of
the suit in question on the lines indicated by the
District Government Pleader, Dharwar.

o.c.signed by)
Collr.Dharwar)

N.

Ballan
for Collector of Dharwar.



SECRETARY TO GOVERNMENT
LEGAL DEPARTMENT
File No. 23007
S. No. 21-1130
ack 4

3 8

No. 1158 dated 8 Nov '50,
Office of the Dist Govt Pleader,
Dharwar.

To

The Collector of Dharwar,

D h a r w a r.

Sub :- Special Civil Suit No.2 of 1950 on
the file of the Civil Judge, S.D.,
Dharwar.

Sir,

In submitting my report under rule 118
of the Rules for Conduct of Legal Affairs of
Government, in respect of the above noted suit,
I have the honour to send here with 1) Chrono-
logical Statement of Facts, 2) Grounds of Defence,
3).Draft Written Statement, in duplicate.

Papers of the case:pages 1 to 34 accompany.

Particulars of the Suit :-

1. Name of the parties :- Basangouda adopted
son of Dyavangouda
Bhangipatil of
Hoovinhippargi, Dist
Bijapur.
Vs.
1. Jamkhandi State Bank
and two others..
2. The amount of claim :- Rs.24750/- for
jurisdiction.
Rs. 4372-10-6 for
Court fees.
3. The date next fixed for filing written
statement - 22nd Nov 1950.

I have now to request you to move Government
in the Legal Department to accord sanction to the
defence of the suit. ~~and for the~~

Copy of summons along with two copies of the
plaint, accompany.

Yours faithfully,

R.V. Jathur

for Dist. Govt. Pleader.

18 NOV 1950
W

5-7-47

Special Suit No.2 of 1950 of Dharwar
Court.

Presented personally by the
plaintiff on 18th April 1947.

sd/- x x x

Exh. No.1.

Spl. Suit No. of 1947.

(Misc. No.2 of 1947)

In the Court of the Subordinate Judge, Kundgol.

Plaintiff :- Basangouda adopted son of Dyavangouda
Bhanghi Patil, Caste Lingayat, age about
21, occupation service, residence
Hoovinhippargi, Bijapur District.

Versus.

Defendants :- 1. The Jamkhandi State Bank, through
its officer Rao Bahaddur Divan Saheb
, State Jamkhandi.
2. Irangouda Giriyangouda Bhangipatil,
age about 25, caste Lingayat, Police
Patil residence Saunshi, Taluka Kundgol
3. Bharamavva kom Dyavangouda Bhanghi-
patil, lingayat, age about 60, occupation
nil, of Bidnal Taluka Hubli.

Value of suit for Jurisdiction

Rs. 247500- 0-0.

Value of suit for court fees

Rs. 4372-10-6.

The plaintiff above named begs to submit the
following :-

1. The plaintiff is not in possession of any moveable and immoveable property except wearing apparel and cooking vessels. As he is unable to pay Court fees on the plaint, it prayed that he may be permitted to file a suit in forma pauperis.

2. The geneology of the family of plaintiff and defendants 2 and 3 so far as it is relevant for the purposes of the present suit is as follows :-

Fakiragouda

----- / Ramangouda (27-8-31) * died without issue)	/ Dyavangouda Bharmavva - deft 3 /	/ Giranagouda died on 14-8-1931 Iravva adopted Iran gouda deft 4
	/ Basangouda -plff (adopted on 13-8-1935)	

3. That Fakiragouda the grand father of the plaintiff and defendant 2, died leaving behind his 3 sons. After his death, the entire family property were in the possession and management of Ramangouda as the eldest member of the family. That in about 1907, a partition amongst the three brothers was effected and the properties mentioned in Schedule A fell to the share of Ramangouda Schedule B to Dyavangouda. That thereafter Girangouda began to live separately and manage his share independently. That as both Ramangouda and Dyavangouda were awarded one House M.No.915 situated in Saumshi they continued to live in the same house maintaining separate cooking establishments and managing their properties independently. As Ramangouda was the eldest son the khata of the entire family property continued in his name till about 1920. That as Dyavangouda died within 5-6 months after the partition, Ramangouda began to help Bharamavva, the widow of Dyavangouda to manage her estate. This position of things seems to have continued till about 1925 when Ramangouda taking advantage of the properties continuing in his khata and the illiteracy, ignorance and helplessness

of Bharmavva seems to have effected a mortgage of R.S.Nos.309, 322, 331, 321, and 378 in favour of defendant No.1 above named without the consent or knowledge of Bharamavva for about Rs.5000/- and the said S.Nos. are still in the possession and management of the State Bank as mortgagees. That as the mortgage so far as the same related to the lands of Dyavangouda is not valid and legal as the same was neither effected with the consent or knowledge of Bharamavva nor for her benefit and therefore the same cannot be binding on the plaintiff.

4. The said Ramangouda died on or about 27-8-31 leaving behind ~~hi~~ an adopted son Shankargouda. In L.C.Suit No.77 of 1932 on the file of this Hon'ble Court, the said adoption was challenged by defendant No.2. The adoption of defendant No.2 by Giriyappa gouda's widow was upheld and the adoption of Shankargouda was negatived by the Court.

5. That in the meanwhile, on or about 28-7-1932 the Mamlatdar of Kundgol attached R.S.NO.310 and 311 mentioned in Schedule A and took possession of the same for management on the ground that there was no heir to Ramangouda. As the question of title of the said property was then pending decision in L.C.S No. 770 of 1932, the estate was allowed to remain for management with the Mamlatdar as stake holder for the benefit of the real claimant. After the decision of the said suit defendant No.2 made an application to the Mamlatdar of Kundgol for giving him possession of the said R.S.No.310-311 and in spite of the plaintiff's objection and claim the possession of the said S.Nos. have been ordered to be given by the Mamlatdar of Kundgol and defendant No.2 is now in possession of the same.

6. The said Bharamavva in accordance with the direction and authority given to her by her husband adopted the plaintiff on or about 13-8-1935 with due ceremony of giving and taking and passed in his favour a registered deed of adoption. By virtue of this adoption, plaintiff became Dyavangouda's son and successor in interest and as such became entitled to the possession of Dyavangouda's estate. As he was a minor at the time of the adoption he could not claim the estate so long.

7. That by virtue of his adoption the plaintiff is entitled to claim half share in the estate of Ramangouda as his heir along with defendant No.2 as both plaintiff and defendant No.2 are related to him in the same degree.

8. That after plaintiff attained majority the plff demanded separate possession of his share in the property of Ramangouda and the entire estate of Dyavangouda and defendant 2 began to put off the same and is denying the plaintiff's claim. Hence the suit.

9. That the cause of action for the suit arose on 13-8-1935 when the plaintiff was adopted by defendant No.3 and Bharmavva was deprived of actual possession of the ~~xxx~~ house and the other properties of Dyavangouda and about July 1946 when defendant 2 evaded the demand of the plaintiff for possession of his estate.

10. As the entire property is situate within the jurisdiction of this Court, and defendants reside there, this Hon' ble Court is competent to adjudicate upon the merits of the claim.

11. The value of the suit claim for the purposes of jurisdiction is as follows :-

The market value of the lands mentioned in
Schedule A Rs.16000- 0-0

The market value of plaintiff's half share in the house bearing M.No.915 of Samsi Rs.500- 0-0

The market value of half share of Ramangouda's lands mentioned in the Schedule A... .. Rs.8000-0-0

The market value of half share of Ramangouda's share in the house bearing M.No.915 of Samsi... .. Rs. 250-0-0

Total.... .. Rs.24750-0-0

The value of the suit for purposes of Court fees is as follows :-

The market value of half share of Dyavangouda in the house bearing M.No.915. Rs. 500-0-0

The market value of half share Ramangouda's share in the house M.No.915... .. . Rs. 250- 0-0

For taking accounts of the money due to defendant No.1 regarding the mortgage... .. Rs. 5- 0-0

For declaration that plaintiff is the validly adopted son of Dyavangouda..... .. Rs. 200- 0-0

For possession of Dyavangouda's lands and half share of Ramangouda's lands... .. . Rs. 2303- 7-0

Total.. Rs. 4372-10-6

12. Defendant 3 is made a party to the suit so that his objections, if any, to the adoption of the plaintiff may be finally heard and decided.

13. The claim of the plaintiff is in time.

14. That though a notice dated 22-1-1947 as required by law was served on defendant No.1, claiming accounts and other reliefs, defendant No.1 has not done any thing in the matter, so far. Hence the suit.

15. Therefore it is most respectfully prayed that this Honourable Court may be pleased to grant a decree declaring the -

- i). the plaintiff to be validly adopted son of Dyavangouda and as such entitled to all the estate of th said Dyavangouda.
- ii). That the plaintiff is an heir to the estate of Ramangouda and as such he is entitled to half share in the estate of the said Ramangouda.
- iii). Grant plaintiff seperate possession of Dyavangouda's lands and half share in the suit house now in the possession of defendant no.2.
- iv). , Grant him seperate possession of half share in Ramangouda's lands and half share in his share of the house by actual division of the house.
- v). Order taking accounts with respect of the mortgage am unt due to defendant No.1 and if the entire amount of the debt is already paid off, order defendant No.1 to hand over possession of Dyavangouda's property free of incumbrance to the plaintiff. Or in the alternative, if it is found on taking accounts that the mortgage is not completely satisfied, give a d eclaration that the property of Dyavangouda is free from the liability of the mortgage and that the liability should attach only to the property of Ramangouda and give a further direction that the said Ramangouda's property be ordered to be redemmed on payment of the balance of the mortgage amount still due.
- vi). Grant plaintiff mesne profits till the property is actually delivered to the plaintiff.
- vii). Grant plaintiff costs of the suit.
- viii). Such other equitable relief that this Honourable Court may deem fit to grant in view of the peculiar circumstances of the case.

18-4-1947.

Sd/- x x x x Basangouda Dyavangouda
Bhangi Patil.

In this, I Basangouda, plaintiff above named do on sole, n affirmation declare that what is stated above is true to the best of my knowledge and information and belief.

Kundgol.

18-4-1947.

Sd/- x x x

Schedule. A.

Property that fell to the share of Ramangouda at the family partition.

Lands situate in Saumsi R.S.Nos.311, 322, 331 and 321/1.

Half share in the house bearing M.No.915 of Saumsi.

Schedule B

Properties that fell to the share of Dyavan gouda at the time of the family partition.

Lands situated at Saumsi P.S.Nos.309, 332 378 and 321/2.

Half share in the house bearing M.No.915 at Saumsi.

18-4-1947.

Sd/- Basangouda Dyavangouda Bhangi
Patil of Saumsi.

urgent

No. 16323 ✓

Office of the
Remembrancer of Legal Affairs,
Bombay Castle 21st Nov. 1950. 13 19

Subject:- Dharwar C.S. No. 2 of 1950.

MEMORANDUM

With reference to the subject noted above, the District Government Pleader, Dharwar, is requested to apply for an adjournment of two months on the next date of hearing and to communicate to this office, at an early date, the date so fixed.

To ^{oc} For Remembrancer of Legal Affairs.
The District Government Pleader, Dharwar.

Issued
wp
21/11
Subd. for signature.
29/11
21/11

Asst. Secy.



No. 176 dated 16 Feb '51, 15-21-51
Office of the Dist Govt Pleader,
Dharwar.

To

The Remembrancer of Legal Affairs,
B o m b a y.

Sub :- Law Suits.

Sir,

I have the honour to inform you the dates fixed for filing written statements in the following cases. You are requested to send the same if the defence is ~~fixed~~ sanctioned. I have given the number of your Memoes for ready reference :-

✓ L.C.S. No. 168/50 - 14-3-51 - Memo No. 14786/25-10-50.
✓ " " 136/50 - 5-3-1950 - " " 13712/28-9-50.
✓ " " 498/50 - 5-3-1951 - " " 15673/21-11-50.
✓ Spl. S. No. 2/1950 - 9-3-1951 - " " 16323/21-11-50.
✓ " " " 57/1949 - 27-2-1951 - " " ----

Yours faithfully,

R.V. Jadhav
for Dist. Govt. Pleader.

3572
20-2-51
A

3512
20-2-51

Subtd.

Please see the letter overlap.
We have read the bps. in all
the cases except in C.S. No. 57/HF
and the cases are kept in A branch.
For orders.

20-2

A 506

D. J. P. the informant that early
steps are being taken to fix
the defence in the Ministry

Sanctioned by
20-2

no.

17 - 23

Office of the
Remembrancer of Legal Affairs,

Bombay Castle (Bombay No.1), February 1951.

Subject:- C.S. Nos. 168, 136, 498, 2 of 1950.

MEMORANDUM.

With reference to his letter No. 176, dated the 16th February 1951, on the above subject, the District Government Pleader, Dharwar, is informed that early steps are being taken to get the defence ^{of the suits} ~~sanctioned~~ of the above noted suits. *Sanctioned*

As regards C. S. No. 57 of 1949, ^{he is informed} ~~it is stated~~, that this office is ^{not} ~~not~~ still in possession of the case papers.

OK
For Remembrancer of Legal Affairs.

To
The District Government Pleader,
Dharwar.

*Pl.
Retype
Subd. for sign.
21/2
A.S.A.
7/2*
KC. 21.2.51.

No. 3256

19-25

Office of the
Remembrancer of Legal Affairs,

Bombay Castle (Bombay No.1), 22 February 1951.

Subject:- C.S. Nos. 168,136,498, 2 of 1950.

MEMORANDUM.

With reference to his letter No. 176, dated the 16th February 1951, on the above subject, the District Government Pleader, Dharwar is informed that early steps are being taken to get the defence of the above noted suits sanctioned.

As regards C.S. No. 67 of 1949, he is informed that this office is still not in possession of the case papers.

Subtd. for sign. & amended.

21-2

A.S.O.
To

oe
For Remembrancer of Legal Affairs.

The District Government Pleader, Dharwar.

Issued
KC.21.2.51.222

Subtd. after issue

It is for order whether these cases
may be included in the March distribution list

23-2

1564

yes, 7/10/1914

12
23-2

The plff has filed this suit for possession of certain lands and also for a declaration that the lands described in Schedule B to the plaint were not liable for the mortgage debt due under a possessory mortgage bond of 1925 executed by the plffs uncle ^{in favour of deftl} Ramangiuda / for a loan of Rs 5943 . The plffs contention is that the lands in Schedule B belonged to his adoptive father Dyawangouda by partition between him and Ramangouda , which had taken place in the year 1907. He urged that Ramangouda had no right or authority ^{with possession} to mortgage these lands / to the Jamkhandi State Bank ^{Deft No1} in 1925; and hence he is entitled to possession of these lands free from that incumbrance .

The suit is defensible. The plff has to prove the factum and the validity of his own alleged adoption. It seems further that there was no partition in 1907 between Ramangiuda and Dyawangouda. The latter died in 1908 and since then Ramangouda was the sole owner of the lands. These lands were entered in his name in the record of rights also right up to the date of the mortgage of 1925. Ramangouda was the sole owner of the lands in 1925 and the mortgage passed by him in favour of deftl is binding on the plff under any circumstances.

The suit is defensible and the defence of the same may be sanctioned on the lines of the accompanying brief.

Defence sent according to

ME
8/3

Secy R.D. 9.3

REVENUE DEPARTMENT,
SECRETARIAT, DARGAY.
09 MAR 1951



Express

23 - 27
No. 3883

Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No.1) 8th March 1951.

Subject:- Dharwar Civil Suit No. 2 of 1950.

MEMORANDUM.

The District Government Pleader, Dharwar is informed that the defence of the suit noted above is being sanctioned. In the meantime, however, he is requested to file the written Statement, a typed copy of which is sent herewith.

ac
for Remembrancer of Legal Affairs.

To

The District Government Pleader,
Dharwar.

KUP.
8/3.

Issued
esp
8/3

To go by Express delivery.
8-3.

25-31 23

In the Court of the Civil Judge S.D. Dharwar.

Civil Suit No 2 of 1950

Basangouda Dyawangouda Bhanghi Patil

Lingayat , aged 21 , resident of

Hoovinhippargi , Dst. Bijapur ----- Plaintiff

Vs.

1 The Jamkhandi State Bank ,

2 Irangouda Giriyangouda Bhanghi Patil

Lingayat , aged 25, resident of Saunshi

Taluka Kundgol.

3 Bharmavva widow of Dyawangouda Bhanghi Patil

Lingayat , aged 60 , resident of Bidnal

Taluka Hubli. Defts.

The written State ment of deft.No 1 herein is as follows:-

1 The deft does not admit the genealogy set out in para 2 of the plaint and puts the plff to the strict proof of the same.

2 This deft does not admit the alleged partition of 1907

between the three sons of Fakirgouda . Nor does he admit that the lands mentioned in Schedule A to the plaint were allotted to the share of Ramangouda and those in schedule B were given to the share of Dyawangouda , as alleged. This deft contends that there was no such partition at all. The lands in dispute were in the possession and management of Ramangouda and they also stood in his name in the Record of Rights up to about the year 1920. He was the eldest member of the family and he had been managing the family affairs and the family property after the death of Dyawangouda about the year 1908 . This deft does not know if the third son Giriyangouda began to live apart since 1907 and if he was in possession and management of any lands separately . Ramangouda and Dyawangouda used to live together in the same house at Saunshi till the latters death . This deft denies the allegation that Ramangiuda managed the lands of Dyawangouda on behalf of the latters widow . Ramangiuda used to manage them as leader and manager of the joint family of himself and his brother Dyawangiuda.

Ramangiuda , as manager, had taken a loan before the year 1925 from Deft 1 on the mortgage of Survey Nos. 331, 332, 378, and 309 . A sum of Rs 943-1-3 was still due to deftl on that mortgage in 1925. On 27-8-1925 Ramangiuda obtained a further loan of Rs 5000 from deftl and he passed a new mortgage bond on that day for the entire debt. By that mortgage bond he also mortgaged Survey Nos 321 and 322 in addition to the lands already mortgaged earlier . The mortgage was possessory and Deftl was put in possession of the mortgaged property. The mortgage debt carried interest at 10 annas per cent per month and the mortgagee had the right to remain in possession till the entire debt had been paid off. The income of the mortgaged property was to be applied towards the payment of the assessment and interest and the balance was to be applied towards the Principal. The income actually received was to be credited.

3 This debt contends that Ramangouda was the sole owner of the mortgaged lands at the date of the mortgage and he had the right and the authority to mortgage the same to deftl. It is denied that Ramangiuda had effected the mortgage of the lands of Dyawangouda without the knowledge or consent of his widow Bharmavva, as alleged. The said widow had no interest in the lands at the time of the mortgage. The lands stood in the name of Ramangouda in the Record of Rights at the time of the mortgage, and he was the exclusive owner thereof. Deftl made proper inquiries and acted in good faith in advancing the loan on the mortgage of the suit lands. The mortgage is binding on the present plff. The mortgage was also for the benefit of the estate of the family. The debt was incurred for the purposes of the family and for legal necessity.

4 This debt does not know and does not admit that deft2 was an adopted son of Giriyangouda . This debt also does not know and does not admit that the present plff was ^{duly and validly} adopted as a son to Dyawangouda by his widow Bharmavva in the year 1935. The debt puts the plff to the strict proof of these allegations, and contends that as a son adopted in 1935 the plff had no right to challenge the ~~suit~~ mortgage of 1925 created by Ramangiuda.

5 This debt does know and does not admit that Survey Nos 310 and 311 were taken over by the Mamlatdar of Kundgol as intestate property .

Survey No 311 has all the while been in possession of deftl as mortgagee.

6 On taking an account of the mortgage up to 19-10 -1950 a sum of Rs 3140-12-0 is due to deftl by way of principal and a sum of Rs 1531-8-10 is due to him by way of interest. A statement of account is submitted herewith. This debt has no objection to the redemption of the suit lands on payment of the amount properly due to deftl at the foot of the mortgage account. This debt was always ready and willing to allow such redemption on such payment. This debt is therefore entitled to his costs of

27 43

the present suit. This debt was also always ready and willing to render an account of the mortgage debt.

7 The plff is not entitled to the declaration that the lands described in Schedule B to the plaint were free from the liability of the mortgage of 1925 . This debt contends that the land described in Schedules A and B are both liable for the mortgage debt due to debt1 under the mortgage bond of 1925.

8 This debt therefore submits that a proper account of the mortgage of 1925 may be taken and the amount due to this debt may be declared and may be ordered to be paid to him by the plff. This debt also prays for a decree for foreclosure if the mortgage debt is not paid off by the plff within the time allowed by the Court.

29 7-35

4459 ✓
No.
Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No.1), 19th March 1950.

Subject: *Dharwar* Civil Suit No. 2 of 1950

MEMORANDUM.

The District Government Pleader, *Dharwar*
is informed that the defence of the suit noted above
is sanctioned and he is requested to conduct the same
on the lines of the brief, a typed copy of which
~~together with two copies of the Written Statement is~~
sent herewith in advance.

Papers of the case in *one file*
received from the Collector accompany.

JK
for
for Remembrancer of Legal Affairs.

To

The District Government Pleader,

Dharwar

K. 14/-

subd for sign
17/3 H. S. Lohi

lu

17-3

Issued
19/3

G.R.L.D. No. 6621 dated 25/4/59
Sent to Press

JKK
30/4

37 - 37
Suits :

Dharwar.

For possession of lands and for
declaration that the suit lands
were not liable for the
mortgage debt.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 6621.

Bombay Castle, 25th April 1951.

Letter from the Collector of Dharwar, No. L.A.W.W.S.-4709, dated the 17th Novem-

IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION) DHARWAR.

ber 1950—Forwarding the

Civil Suit No. 2 of 1950.

Shri Basangauda ... Plaintiff;

versus

papers in the suit noted in the
margin; and requesting sanc-

The Jamkhandi State Bank ... Defendant.

tion to its defence.

Memorandum to the District Government Pleader, Dharwar, No. 4457, dated the 19th March 1951—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay,

R. R. Dhurandhar
J. R. DHURANDHAR,
Secretary to Government.

k Leg H 5-1

Original for
Issued
22/6

[P.T.O.]

To

- * The Revenue Department,
- * The Collector of Dharwar,
- The District Government Pleader, Dharwar (with two copies of the brief).

* With a copy of the brief.

No. ⁶ of 1951.

Copy forwarded for information and guidance to

*Subd. after vis
Lk in S. Dharwar / 57 (over)*

25/6

ASG

25/6

Chronological Statement of Facts.

One Fakirgouda died long ago leaving three sons named Ramangouda, Dyawangouda and Girangouda. The entire family property was in the possession and management of the eldest son Ramangouda on the death of Fakirgouda. The family was joint.

In 1907 or about that time the youngest son Giriyangouda began to live apart and probably some lands were given to him. But Ramangouda and Dyawangouda continued to live together in the same house. The plaintiff now alleges that there was a partition between the three brothers in 1907. But that statement does not appear to be true.

Dyawangouda was married to Bharmovva defendant 3. Dyawangouda died about the year 1908. From that time the family lands were managed by Ramangouda. These lands stood in his name in the Record of Rights all the while.

Some time before 1925 Ramangouda obtained a loan from the Jamkhandi State Bank defendant No. 1 on the mortgage of survey Nos. 331, 332, 378 and 309. On 27th August 1925 a sum of Rs. 943-1-0 was due to the mortgagee under that mortgage. On 27th August, 1925 Ramangouda obtained a further loan of Rs. 5,000 from the same bank. He passed a new mortgage bond for the entire debt on that date in favour of defendant No. 1. That mortgage included survey Nos. 321 and 322 in addition to the lands already mortgaged. The mortgage of 1925 was possessory and defendant No. 1 was put in possession. The mortgage debt carried interest at 10 annas per cent. per month. The income of the mortgaged land was to be applied towards payment of the assessment and the interest and the balance if any was to be applied towards the principal of the debt. The mortgage was purely possessory. There was no right of sale. The mortgagee had the right to continue in possession till the debt due had been paid off.

Ramangouda died in 1931. The Revenue authorities had taken possession of some of his lands as it was thought that he had no heirs. A man named Shankergouda came forward and claimed that he was the adopted son of Ramangouda. That claim was opposed by Irangouda defendant No. 2, who was the adopted son of Giriyangouda. The dispute was decided by a Civil Court and was held that Shankergouda was not the adopted son of Ramangouda and that defendant No. 2 was an adopted son of Giriyangouda, and the next heir to Ramangouda.

The present plaintiff alleges that he was taken in adoption in 1935 by Bharmavva the widow of Dyawangouda. The plaintiff claims that he is also a next heir to the property of Ramangouda along with defendant No. 2. The plaintiff has filed the present suit for possession of the entire property of his adoptive father Dyawangouda, and for partition and possession of a half share of the property of Ramangouda. According to the plaintiff's case the three brothers Ramangouda, Dyawangouda and Giriyangouda had separated in 1907. The plaintiff further alleges that the mortgage bond of 1925 is not binding on the lands which were allotted to the share of Dyawangouda in the partition of 1907. He contends that Ramangouda had no right or authority to mortgage the lands of his deceased brother Dyawangouda. Those lands belonged to Bharmavva and after 1935 they belonged to the plaintiff by adoption. The plaintiff wants a declaration that the mortgage of 1925 in favour of defendant No. 1 was not binding on the lands described in schedule B to the plaint as they had been allotted to the share of his adoptive father Dyawangouda in 1907. The plaintiff wants possession of those lands from defendant No. 1 free from the incumbrance.

The suit was originally filed in 1947 in the Court of the Civil Judge, Kundgol. But after the merger of the State of Jamkhandi in the State of Bombay the suit was transferred to the Dharwar Court and was renumbered as Special Suit No. 2 of 1950. The Jamkhandi State Bank was taken over by the State of Bombay. Hence the summons of the Bank was served on the Government pleader at Dharwar.

Grounds of Defence.

Notice.—It is alleged in paragraph 14 of the plaint that notice of suit had been served on defendant No. 1 on 22nd January 1947 as required by law. A copy of that Notice is not on the record here. The District Government Pleader should examine the copy of the Notice produced in the Court and shall ascertain if it was in order. If not, the necessary points may be raised by way of defence.

Adoption.—The plaintiff alleges that he was adopted as a son unto Dyawangouda by his widow Bharmavva in 1935. The alleged adoption of the plaintiff should be denied and disputed and the plaintiff should be put to the strict proof of the factum and the validity of the same. The plaintiff also alleges that defendant was adopted as a son unto Giriyangouda by the latter's widow after 1931. That allegation should be also denied and disputed.

Partition.—The plaintiff bases his claim in this suit mainly on the alleged partition of 1907 by which the lands described in Schedule B to the

plaint were said to have been given to the share of Dyawangouda. This alleged partition should be denied and disputed. The circumstances show that there was probably no such partition. It is stated in the plaint itself that Ramangouda and Dyawangouda used to live in the same house even after 1907. The allegation that they messed apart in that house should be denied and disputed. It also appears that in spite of the alleged partition of 1907 the lands described in Schedules A and B all stood in the name of the eldest brother Ramangouda in the Record of Rights up to about the year 1920. If there had been a partition in 1907 the lands given to the share of each brother would have been entered in his name in the Record of Rights from 1907. The plaint also records that all the lands were managed by Ramangouda. It seems that Dyawangouda died about the year 1908; leaving a widow named Bharmava defendant 3. If there had been a partition in 1907 the widow of Dyawangouda would have claimed her husband's share of the lands immediately. But she never made any such claim. That fact is inconsistent with the alleged partition of 1907.

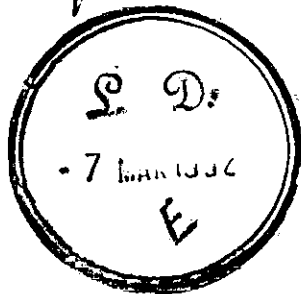
Mortgage of 1925.—It seems that before 1925 Ramangouda had taken a loan from the Jamkhandi State Bank on the mortgage of Survey Nos. 331, 332, 378 and 309. On 27th August 1925 a sum of Rs. 943 and odd was due to the Bank on that mortgage. On that day Ramangouda obtained a further loan of Rs. 5,000 from the same Bank and passed a new mortgage bond for the entire debt. By that mortgage bond he mortgaged Survey Nos. 321 and 322 in addition to the lands already mortgaged. In the mortgaged bond of 1925 it is recited that the mortgaged lands belonged to the mortgagor and were in his possession till the date of the mortgage. It should be urged therefore that Ramangouda was the exclusive owner of these lands at the date of the mortgage. In any case, it should be urged, the Bank acted in good faith and made proper inquiries before making the advance on the mortgage. The mortgage debt was apparently taken for the necessities of the family and for the benefit of the estate. The mortgage was possessory and the Bank has been in possession since then. The mortgage debt carries interest at 10 annas per cent. per month. The income of the mortgage property is to be applied first in payment of the Assessment and interest, and the balance, if any, is to be applied towards the principal. The mortgage is purely possessory and there is no right to bring the mortgaged property to sale. Hence the mortgagee can only claim foreclosure. No period is fixed for repayment of the debt. The mortgagee has the right to continue in possession till the entire debt is paid off. It should be urged that the mortgage of 1925 was binding on the plaintiff, if it is proved that he was the adopted son of Dyawangouda. As the alienation by way of mortgage had been made long before the adoption and by a person who

was then the full and exclusive owner of the property, the plaintiff had no right to challenge that transaction. The plaintiff cannot claim possession of the mortgaged lands without redeeming the mortgage.

Amount due on the mortgage.—A Statement of Account has been prepared which shows that on 19th October 1950 a sum of Rs. 3,140-12-0 was due for principal and Rs. 1,531-8-10 were due for interest on the mortgage of 1925. That amount should be claimed from the plaintiff along with further interest due after 19th October 1950. It may be also urged that that decree should provide for foreclosure in case of the failure of the plaintiff to pay off the amount due within the time allowed by the Court.

S. Sharma / 57.
(New)
Mr. 26/6/57 -

37-43
No. 165 dated 4 March '52,
Office of the Dist Govt Pleader,
Dharwar.



To

The Remembrancer of Legal Affairs,
B o m b a y.

Sub :- Sol. Suit No.2 of 1950 - Dharwar.

Ref :- G.B.L.D. No.6621 dated 25th April '51.

Sir,

I have the honour to inform you that the above case was decided by the Civil Judge, S.D., Dharwar, on 23rd Feb '52, when the following order was passed :-

" Decree in terms of compromise against defendants Nos. 2 and 3. Suit against defendant No.1 is dismissed. Plaintiff to pay costs of defendant No.1. Plaintiff and defendants 2 and 3 to bear their own costs. Plaintiff to pay Court fee. Copy to Collector."

copy of the judgment is hereto attached.

Yours faithfully,

Ba. Maheshi Agstn
i/c. Dist Govt Pleader.

4966
E/163-52

LA

Dwr CS no. 2/50 is
decided. It is in favor
of dept 1. Hence report
may be recorded after
copy of judgment is filed.
Till then - This may be
filed in A Dwr 5/51

He
29/3

A. Solr

by

24-3

29 45
Received on 6-1-1950

Registered on 6-1-1950.

Decided on 29-2-1952.

Duration - 2 years, 1 month
and 23 days.

IN THE COURT OF THE CIVIL JUDGE,
SENIOR DIVISION, DHARWAR.
AT DHARWAR.

Special Suit No. 2 of 1950

Exh. No. 69.

Pleaders :-

Mr. K. Swami.

Basangouda adopted father Dyavangouda
Bhangl, Patil, age 21, Occ. Service,
Residence Hoovinahippargi, Bijapur
District. ----- Plaintiff.

Versus.

- " Mahishi. (1) The Jamkhandi State Bank
through the Mahalkary, Kundgol.
- " Hiregoudar. (2) Irangouda Giryangouda Bhangl-patil,
age 25, Occ. police patil, residence
Saunshi.
- " M.S. Patil. (3) Bharmavva Kom Dyavangouda Bhangl-patil,
Occ. Nil of Bidanal. ----- Defendants.

Claim Rs. 4372-10-6 for Court
fees.
" 24750-0-0 for juris-
diction.

J u d g m e n t.

The plaintiff sues to get the following
reliefs :-

1. A declaration that the plaintiff is the
validly adopted son of Dyamangouda and as such,
entitled to all the estate of the said Dyavangouda;
2. A declaration that the plaintiff is an heir to

the estate of Ramangouda and as such entitled to 1/2 share in his estate; 3. to get possession of Dyavangouda's lands and 1/2 share in the suit ~~xxxx~~ house now in possession of ~~Rxxxxxgoudaxxxxxx~~ defendant No. 2 and half share in Ramangouda's lands and house; (4) to have accounts taken with respect to the mortgage in favour of defendant No. 1 and to get possession of Dyavangouda's property from defendant No. 1 to the entire amount of the mortgage if found to have been satisfied free from the encumbrance; (5) If the mortgage is not found to be satisfied, then to get a declaration that Dyavangouda's property is free from liability of the mortgage and the liability attaches only to Ramangouda's property and an order for redemption of Ramangouda's property on payment of mortgage amount still found due; (6) to get future mesne profits and costs of the suit.

2. Plaintiffs case is as follows :-

As the plaintiff is not possessed of any property he has sued in forma pauperis. The genealogy connecting plaintiff with defendants 2 and 3 is as follows - One Fakiragouda and three sons, Ramangouda, Dyavangouda and Girangouda. Ramangouda died on 27-8-1931 without any issue. Dyavangouda's widow Bharmavva, the defendant No. 3, adopted plaintiff on 13-8-1935. Girangouda died on 14-8-1931 leaving behind him his widow Iravva who adopted defendant No. 2. On Fakiragouda's death, the entire family property went into the possession and management of Ramangouda and the eldest member of the family. In about 1907, a partition was effected between three brothers and properties mentioned in schedule A fell to the share of Ramangouda and those in schedule B to Dyavangouda. Thereafter, Girangouda began to live separately and manage his share independently. Both Ramangouda and Dyavangouda were awarded one house Municipal No. 315 in Saunshi and they continued to live in that house

seperately. The khata continued in the name of Ramangouda the eldest brother till about 1920. Dyavangouda died within 5-6 months after the partition and Ramangouda began to help Bharmavva the widow of Dyavangouda to manage her estate till about 1925. Then taking advantage of the lands being in his khata and of the ignorance and helplessness of Bharmavva, Ramangouda seems to have effected a mortgage of R.S.Nos. 300, 322, 321, 331, 332 and 375 in favour of defendant No. 1 for about Rs. 5000/- without the ~~know~~ knowledge or consent of Bharmavva. Those lands are still in the possession of the Bank, Defendant No. 1. That mortgage is not valid and binding on Dyavangouda's lands and they cannot bind the plaintiff. Ramangouda died on about 27-8-1931 leaving behind him an adopted son Shankargouda. In L.C. Suit No. 77/32 of this Court, defendant No. 2 challenged that adoption. The adoption of defendant No. 2 was upheld there in and that of Shankargouda was negatived. In the meanwhile, on about 28-7-1932, the Mamlatdar of Kundgol attached R.S.Nos. 312 and 311 included in schedule 2 and took possession of them on the ground that there was no heir of Ramangouda. The question of title to the said property was then pending in L.C. Suit No. 77 of 1932 and the estate was allowed to remain under the management of the Mamlatdar. After the decree, defendant No. 2 applied to the Mamlatdar of Kundgol to get possession of those two lands and in spite of protest by plaintiff, he got possession of the same. Bharmavva in accordance with the direction and authority given to her by her husband adopted plaintiff on or about 13-8-1935 with all due ceremony and passed a registered deed. Consequently, he is entitled to Dyavangouda's estate

and a half share in Ramangouda's estate along with defendant No.2. Plaintiff attained majority and demanded separate possession but defendant No.2 denies plaintiff's claim. Bharmavva was deprived of the actual possession of the house and the other properties of Dyavangouda in about July 1946 when defendant No.2 evaded the demand of plaintiff for possession. So plaintiff has filed this suit.

8. The defendant No.1, by his written statement Exh.61 contends as follows - Defendant does not admit the geneology nor the alleged partition of 1907. He also denies the division of lands mentioned in the plaint. There was no partition when Ramangouda was holding possession and management of all the properties. All the properties stood in his name in the Record of Rights upto about 1920. He was the eldest member of the family and had been managing the family affairs after the death of Dyavangouda in about 1908. Defendant does not know if Girangouda began to live separate since 1907 and he held possession of the property separately. Ramangouda and Dyavangouda used to live together in the same house at Saunshi till the latter's death. Defendant denies the allegation that Ramangouda managed the lands of Dyavangouda on behalf of his widow. He managed them as manager of the joint family. As such manager, he took a loan before the year 1925 from defendant No.1 on the mortgage of Survey Nos.331, 352, 373, and 309. A sum of 943-1-3 was still due to defendant No.1 on that mortgage in 1925. On 27-8-1925, Ramangouda obtained a further loan of Rs.5000/- from defendant no.1 and passed a new mortgage for the entire debt adding Survey Nos.321 and 322 to the former lands. This was a possessory mortgage and defendant No.1 took possession. Rate of interest was 10 annas percent per month and the mortgagee has a right to hold possession till the mortgage is satisfied. The income of the mortgage property was to be applied towards the payment of the assessment and interest and the balance was to be

applied towards the principal. The income actually received was to be credited. As Ramangouda was the sole owner of the mortgage lands the mortgage is binding on the plaintiff. Defendant No.1 made proper enquiries and acted in good faith advancing the loan on the mortgage of the suit lands. Plaintiff is bound by it. The mortgage was for the benefit of the estate and for the purpose of the family and legal necessity. Defendant No.2's adoption is not admitted. Plaintiff's adoption is also not admitted. A son adopted in 1935 cannot challenge the mortgage of 1925 created by Ramangouda. Defendant does not know if the Mamlatdar of Kundgol had taken Survey Nos.310 and 311 as intestate property. Survey No.311 has been all along in possession of defendant No.1 as mortgagee. On taking accounts of the mortgage upto 1910-1950, a sum of Rs.3140-12-0 is due to defendant No.1 by way of principal and a sum of Rs.1531-8-10 by way of interest. Defendant No.1 has no objection to redemption for payment of the dues. Defendant was always ready and willing to allow such redemption. So defendant No.1 is entitled to his costs. Plaintiff is not entitled to any declaration sought. The properties in both Schedules are liable to the mortgage. A decree for foreclosure may be given if the mortgage debt is not paid off before the time allowed by the Court.

4. The defendant No.2 raised various contentions by Exh.33 but ultimately, he compromised the suit out of Court with plaintiff (Vide Exh.No.65).

5. Defendant No.3 by her written statement, Exh.No.37 admits plaintiff's claim.

6. The following issues are raised for decision -
1. Does plaintiff prove the alleged partition of 1937 ? What properties fell to Dyavangouda's share ?
 2. If no, is plaintiff's adoption valid being without the consent of the sole surviving coparcener defendant No. 2, in view of Act I of 1937 of Jankhandi State ?
 3. Does plaintiff prove that he was adopted by Bharamavva, widow of Dyavangouda as alleged and that it is valid ?
 4. Does defendant No. 2 prove that Dyavangouda had prohibited his widow from adopting ?
 5. Does defendant No. 2 prove that Ramangouda had acquired title to Dyavangouda's property by adverse possession of more than 12 years ?
 6. Can plaintiff divest properties of Ramangouda inherited by defendant No. 2 before plaintiff's adoption ?
 7. Does defendant No. 2 prove that plaintiff's suit is barred by Res Judicata, estoppel and waiver as alleged ?
 8. Is this suit barred under section 47 of the C.P.C. in view of the orders in L.D.No. 211 of 1333 of Kundgol Court ?
 9. Is the suit in time in view of the order in Misc. No. of 1935 of that Court ?
 10. Is plaintiff entitled to any share in C.T.S.No. 915 of Saunshi ?
 11. If so, what equitable orders be passed in that connection ?
 12. Is defendant No. 2 entitled to any compensatory costs ?
 13. What is plaintiff's share ?
 14. Does defendant No. 1 prove that the mortgage passed by Ramangouda in favour of the State Bank binding on plaintiff's property ?

- 45-51
15. Is the State of Bombay a necessary party ?
 16. Is the suit in the present form tenable against defendant No.1 ?
 17. What order ?

7. My findings are :-

1. Rept. open.
2. do.
3. do.
4. do.
5. do.
6. do.
7. do.
8. do.
9. do.
10. do, as do not survive.
11. do. do.
12. do. do.
13. do. do.
14. do. do.
15. do. do.
16. No.
17. See order below.

Reasons.

8. Defendant No.2 and plaintiff have compromised the suit out of Court and so the dispute between them is at an end. But defendant No.1 is not a party to the compromise and so plaintiff has to establish his claim against defendant No.1 apart from the compromise. Defendant No.1 is an admitted mortgagee of the lands which by the compromise with defendant No.1, plaintiff has undertaken to redeem partly. Now he is not claimed to be an agriculturist and cannot take advantage of the

provisions of the D.A.R. Act. His present suit against defendant No. 1 is for taking accounts of the mortgage in order to find out what amount is due to defendant No. 1. Such a suit cannot obviously lie except under section 15p of the D.A.R. Act and plaintiff cannot claim protection of the section being a non-agriculturist. The suit is not for redemption also. So, the suit as framed is not maintainable against defendant No. 1. In view of this finding the other issues between plaintiff and defendant No. 1 do not survive and the suit has to be dismissed as not maintainable in the present form against defendant No. 1. So, I keep open the other issues. It is open to plaintiff or defendant No. 2 to sue defendant No. 1 for redemption and therein claim accounts. Defendant No. 3 has no claim nor opposition to plaintiff. So, I order as below :-

O r d e r

Decree in terms of compromise against defendants Nos. 2 and 3. Suit against defendant No. 1 is dismissed. Plaintiff to pay costs of defendant No. 1. Plaintiff and defendants 2 and 3 to bear their costs. Plaintiff to pay Court fee. Copy to Collector.

29th February, 1958.

Sd/- V.B. Potdar;

Civil Judge, F.D., Dharwar.

Sd/- 3757
31-8-58